

§ 30.60

the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.); the rules and regulations set forth at 24 CFR parts 1710, 1715, and 1720; or any order issued thereunder.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Maximum penalty.* The maximum penalty is \$1,100 for each violation, up to a limit for any particular person of \$1,100,000 during any one-year period. Each violation shall constitute a separate violation as to each sale or lease or offer to sell or lease.

§ 30.60 Dealers or loan correspondents.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any dealer or loan correspondent who violates section 2(b)(7) of the National Housing Act (12 U.S.C. 1703). Such violations include, but are not limited to:

(1) Falsifying information on an application for dealer approval or re-approval submitted to a lender;

(2) Falsifying statements on a HUD credit application, improvement contract, note, security instrument, completion certificate, or other loan document;

(3) Failing to sign a credit application if the dealer or loan correspondent assisted the borrower in completing the application;

(4) Falsely certifying to a lender that the loan proceeds have been or will be spent on eligible improvements;

(5) Falsely certifying to a lender that the property improvements have been completed;

(6) Falsely certifying that a borrower has not been given or promised any cash payment, rebate, cash bonus, or anything of more than nominal value as an inducement to enter into a loan transaction;

(7) Making a false representation to a lender with respect to the credit-worthiness of a borrower or the eligibility of the improvements for which a loan is sought.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

24 CFR Subtitle A (4-1-98 Edition)

(c) *Amount of penalty.* The maximum penalty is \$5,500 for each violation, up to a limit for any particular person of \$1,100,000 during any one-year period.

§ 30.65 Failure to disclose lead-based paint hazards.

(a) *General.* The Director of the Office of Lead Hazard Control, or his or her designee, may initiate a civil money penalty action against any person who knowingly violates 42 U.S.C. 4852d(b)(1).

(b) *Amount of penalty.* The maximum penalty is \$11,000 for each violation.

Subpart C—Procedures

§ 30.70 Prepenalty notice.

Whenever HUD intends to seek a civil money penalty, the official designated in subpart B of this part, or his or her designee (or the chairperson of the Mortgage Review Board, or his or her designee, in actions under § 30.35), shall issue a written notice to the respondent. This prepenalty notice shall include the following:

(a) That HUD is considering seeking a civil money penalty;

(b) The specific violations alleged;

(c) The maximum civil money penalty that may be imposed;

(d) The opportunity to reply in writing to the designated program official within 30 days after receipt of the notice; and

(e) That failure to respond within the 30-day period may result in issuance of a complaint under § 30.85 without consideration of any information that the respondent may wish to provide.

§ 30.75 Response to prepenalty notice.

The response shall be in a format prescribed in the prepenalty notice. The response shall include any arguments opposing the imposition of a civil money penalty that the respondent may wish to present.

§ 30.80 Factors in determining appropriateness and amount of civil money penalty.

In determining whether to seek a penalty, and the amount of such penalty, the officials designated in subpart B of this part shall consider the following factors:

- (a) The gravity of the offense;
- (b) Any history of prior offenses. For violations under §§ 30.25, 30.35, 30.45, 30.50, 30.55, and 30.60, offenses that occurred prior to December 15, 1989 may be considered;
- (c) The ability to pay the penalty;
- (d) The injury to the public;
- (e) Any benefits received by the violator;
- (f) The extent of potential benefit to other persons;
- (g) Deterrence of future violations;
- (h) The degree of the violator's culpability;
- (i) With respect to Urban Homestead violations under § 30.30, the expenditures made by the violator in connection with any gross profit derived; and
- (j) Such other matters as justice may require.
- (k) In addition to the above factors, with respect to violations under §§ 30.45, 30.55, and 30.60, the Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, shall also consider:
 - (1) Any injury to tenants; and/or
 - (2) Any injury to lot owners.

§ 30.85 Complaint.

- (a) *General.* Upon the expiration of the period for the respondent to submit a response to the prepenalty notice, the official designated in subpart B of this part, or his or her designee (or the Mortgagee Review Board in actions under § 30.35) shall determine whether to seek a civil money penalty. Such determination shall be based upon a review of the prepenalty notice, the response, if any, and the factors listed at § 30.80. A determination by the Mortgagee Review Board to seek a civil money penalty shall be by a majority vote of the Board.
- (b) If a determination is made to seek a civil money penalty, the official or his or her designee, or the Mortgagee Review Board, shall issue a complaint to the respondent. The complaint shall state the following:
 - (1) The factual basis for the decision to seek a penalty;
 - (2) The applicable civil money penalty statute;
 - (3) The amount of penalty sought;
 - (4) The right to submit a response in writing, within 15 days of receipt of the

complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought;

(5) The address to which a response must be sent;

(6) That the failure to submit a response may result in the imposition of the penalty in the amount sought.

(c) A copy of this part and of 24 CFR part 26, subpart B shall be included with the complaint.

(d) *Service of the complaint.* The complaint shall be served on the respondent by first class mail, personal delivery, or other means. In cases of violations by mortgagees and lenders of 12 U.S.C. 1735f-14(b) (1)(D) or (1)(F), or by GNMA issuers or custodians of 12 U.S.C. 1723i(b) (1)(G) or (1)(I), a copy of the complaint shall be provided to the Attorney General.

§ 30.90 Response to the complaint.

(a) *General.* The respondent may submit to HUD a written response to the complaint within 15 days of its receipt. The response shall be considered a request for a hearing. The response should include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty is not warranted or should be less than the amount sought in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.37 of this title. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.39 of this title.

§ 30.95 Hearings.

Hearings under this part shall be conducted in accordance with the procedures at 24 CFR part 26, subpart B.

§ 30.100 Settlements.

The officials listed at subpart B of this part, or their designees (or the Mortgagee Review Board for violations